42

Regulations, Part 42: Farm Labor Coordinated Enforcement

Title 29, Part 42 of the
Code of Federal Regulations

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division

WH Publication 1452
(Issued July 1980)

NEWARK PUBLIC LIBRARY
SEP 11 1980
U. S. GOVT. PUBS.
DEPOSITORY 376

READEX FICHE best copy available

L 36.206/2.

This publication conforms to the Code of Federal Regulations as of June 20, 1980, the date this reprint was authorized.

U.S. Department of Labor
Employment Standards Administration
Washington, D.C. 20210

PART 42—COORDINATED ENFORCEMENT

Sec.

42.1 General statement.
42.2 Purpose.
42.3 National Committee.
42.4 Structure of the National Committee.
42.5 Policy review.
42.6 Enforcement strategy.
42.7 Complaint/Directed Action Logs.
42.8 Coordination plan.
42.9 Farm Labor Specialist (ESA).
42.10 Farm Labor Contact Persons and Regional Coordinators (OSHA).
42.20 Regional Farm Labor Coordinated Enforcement Committee.
42.21 Data collection.

Authority: 29 U.S.C. 49, et seq.; 29 U.S.C. 201 et seq.; 29 U.S.C. 651, et seq; 29 U.S.C. 801, et seq.; 5 U.S.C. 301.

§ 42.1 General statement.

These regulations are promulgated by the Secretary of Labor to describe the coordination of the activities of the Employment Standards Administration, the Occupational Safety and Health Administration, and the Employment and Training Administration relating to migrant farmworkers.

§ 42.2 Purpose.

(a) These regulations coordinate the activities of ESA, OSHA and ETA, and are intended to:

(1) Ensure effective enforcement efforts under the protective statutes—i.e., the Farm Labor Contractor Registration Act (FLCRA), the Occupational Safety and Health Act (OSHA), and the Fair Labor Standards Act (FLSA) ("protective statutes").

(2) Ensure that the enforcement efforts of DOL agencies are coordinated to maximize their effectiveness, yet minimize unnecessary duplication.

(3) Focus the attention of DOL agencies upon the special employment-related problems faced by migrant farmworkers.

(4) Coordinate DOL enforcement efforts with related activities of farmworker groups, federal and State agencies, and other concerned parties outside the Department of Labor whose operations are related to the employment, housing, and working conditions of migrant farmworkers.

(5) Establish an information exchange which will afford the Department, farmworker groups, and other concerned parties outside the Department of Labor the opportunity to exchange information concerning wages, hours and working conditions.

(b) [Reserved]

§ 42.3 National Committee.

A National Farm Labor Coordinated Enforcement Committee ("National Committee") is hereby established which shall be responsible for: Reviewing policies, guidelines and enforcement goals and strategies for the Department of Labor with respect to migrant farm labor-related enforcement efforts under the protective statutes; resolving policies which are in conflict between DOL agencies; advising the Secretary on legislative initiatives which would strengthen farm labor-related enforcement efforts; and providing guidance and recommendations to DOL agencies on related enforcement activities.

§ 42.4 Structure of the National Committee.

(a) The National Committee shall consist of the Under Secretary of Labor, the Solicitor of Labor, and the Assistant Secretaries for the Employment Standards Administration (ESA), the Occupational Safety and Health Administration (OSHA), and the Employment and Training Administration (ETA).

(b) The Committee shall be headed by the Under Secretary, who shall assign to one of his/her Special Assistants the responsibility of directing the necessary staff work required by the Committee.

(c) The National Committee shall meet on a quarterly basis to review the Department's responsibilities affecting migrant farmworkers, and at any other time as determined by the Under Secretary to be necessary to carry out the National Committee's responsibilities.

(d) There shall be a National Committee staff level working group consisting of senior staff representatives from the Branch of Farm Labor Law Enforcement, the Wage and Hour Division, the U.S. Employment Service (the National MSFW Monitor Advocate), the Employment and Training Administration, the Office of Field Coordination and the Directorate of Federal Compliance and State Programs in the Occupational Safety and Health Administration, and the Office of the Solicitor.

(e) The Special Assistant to the Under Secretary shall be the director of the staff level working group.

(f) The staff level working group shall meet monthly or more frequently as requested by the director.

(g) The director, or another member of the National Committee, shall attend the annual public meeting of each of the Regional Farm Labor Coordinating Committees.

§ 42.5 Policy review.

(a) The National Committee shall review the policies of OSHA, ESA and the United States Employment Service (USES), and the Office of the Solicitor and shall guide the respective agencies in improving the effectiveness of and coordination among all DOL agencies assigned responsibilities related to migrant farmworkers. These policies and guidance shall include such issues as the following:

(1) The coordination of inspections, including housing inspections, reports and procedures of DOL agencies and State agencies designated by the Department to follow-up on complaints under, and to detect promptly violations of, any of the protective statutes.

(2) The expedited enforcement and legal procedures to accommodate the transient and seasonal nature of migrant farmworker's problems.

(3) The development of systems for prompt and efficient referral to the appropriate federal or State agency of violations or complaints discovered by or reported to DOL agencies or appropriate State agencies, along with prompt and efficient follow-up action by the appropriate agency from the initiation of the investigation through final enforcement action.

(4) The training of all appropriate DOL personnel in order to ensure coordinated and effective enforcement.

(5) The level of enforcement achieved by the remedies or sanctions used by DOL agencies to enforce the protective statutes.

(6) The effectiveness of the Specialists Program and the Regional Farm Labor Coordinated Enforcement Committees.

(b) [Reserved]

§ 42.6 Enforcement strategy.

(a) Each Regional Farm Labor Coordinated Enforcement Committee shall annually prepare, on a regional basis, a migrant farm labor enforcement strategy for each protective statute pursuant to § 42.20(c)(3). The National Committee shall review these regional strategies and make recommendations to the appropriate DOL agencies. In reviewing the enforcement strategies, the Committee shall pay particular attention to:

(1) The priorities set for the investigation and enforcement activities of compliance officers.

(2) Available data on the past and current levels of enforcement of the protective statutes in the region, including the data collected pursuant to § 42.21, infra.

(3) The level of attention given to directed activity as distinguished from complaint-initiated compliance activities.

(4) The capability of the agency to respond quickly and thoroughly under the strategy to emergencies involving violations of any of the protective statutes.

(5) The level of priority given by the Office of the Solicitor to farm labor-related enforcement activities under the respective protective statutes.

(6) The ability of agencies to respond quickly and effectively to resolve complaints.

(7) The extent to which agencies follow through with appropriate remedies and sanctions.

(8) The degree to which agencies coordinate and cooperate on a local and regional level.

(9) Other activities of DOL agencies related to migrant farmworker enforcement.

§ 42.7 Complaint/directed action logs.

(a) To facilitate the Committee's review of all migrant farmworker complaints, including pre and post occupancy housing inspections and the enforcement strategies of DOL agencies, the Committee shall oversee the operation of a system of coordinated Complaint/Directed Action Logs ("logs"). The logs shall be maintained by each DOL agency and appropriate SESA and OSHA State agencies.

(b) The logs shall record both the numbers of compliance actions initiated as a result of complaints and those initiated on the basis of directed activity. They shall also include a statistical record of all original referrals both from and to other DOL agencies or federal or State authorities.

(1) Whenever a complaint is received and/or an investigation is completed by an agency, the appropriate official of that agency shall enter the matter on the log.

(2) Wherever possible, the responsible agency, upon request, shall inform the complainant of the status of the actions pending, and shall inform, when applicable, the referring agency.

(3) ESA, OSHA, USES, and the Office of the Solicitor shall be responsible for preparing the quarterly statistical summary by regions of the respective agency's compliance activity. This summary shall include all complaints and compliance actions which (i) were pursued to completion by the subagency during the reporting period or (ii) were received during the reporting period or earlier, and are pending. Each agency also shall report a summary of aging and resource allocation data. The summary shall be submitted to the National Committee and the appropriate Regional Committee.

(c) The National Committee staff shall analyze the statistical summaries and shall recommend National or Regional Committee action where problems or short-comings are identified. Pursuant to this review, the National Committee shall take steps to ensure that the responsible agencies make timely responses to complaints and conduct vigorous enforcement action.

§ 42.8 Coordination plan.

(a) Based upon, among other things, the regional enforcement strategies submitted under § 42.6, the National Committee shall develop an annual coordination plan concerning farm labor-related responsibilities of the Department, including migrant housing inspections, the referral of complaints, enforcement action on violations of federal or State employment-related laws subject to the jurisdiction of DOL, or regulations administered by DOL or appropriate State agencies, and assistance to stranded migrant farmworkers.

(b) The coordination plan shall describe the present program responsibilities of ESA for enforcement in the farm labor area of the Fair Labor Standards Act, and the Farm Labor Contractor Registration Act. The plan shall include a statistical summary of the prior-year complaints under, and alleged violations of, FLSA and FLCRA as recorded in the logs of the ESA Wage and Hour Regional and Area Offices, and shall set forth general goals and objectives for FLSA and FLCRA enforcement activities for the following year as established by ESA.

(c) The coordination plan shall describe the present program responsibilities of OSHA for protecting the safety and health of migrant farmworkers. The plan shall include a statistical summary of prior-year complaints under, and alleged violations of, OSHA recorded in the logs of the OSHA State and area offices, and shall provide general goals for OSHA enforcement activities for the following year as established by OSHA.

(d) The plan shall include a review of the procedures developed by ETA to

handle emergency situations, such as the stranding or displacement of migrants, and shall provide general goals for USES activities for the following year.

§ 42.9 Farm labor specialist (ESA).

(a) The Assistant Secretary for ESA shall designate ESA Compliance Officers as Farm Labor Specialists ("Specialists"). The Specialists shall be assigned to area offices, or field stations under area offices, with significant numbers of agricultural worker activity as designated by ESA. These Specialists shall coordinate FLCRA and FLSA activities in agricultural employment and shall be responsible for:

(1) Conducting FLCRA/FLSA farm labor investigations;

(2) Serving as staff advisors and consultants to regional and area officials on FLCRA and FLSA;

(3) Coordinating FLCRA and FLSA activities with appropriate OSHA and USES activities;

(4) Directing special migrant farmworker enforcement activities;

(5) Monitoring the farm labor-related activities of significant crew leaders and growers in the area to ascertain that those against whom ESA has taken enforcement action are operating in compliance with FLCRA and FLSA;

(6) Conducting technical assistance and public information programs regarding FLCRA and FLSA;

(7) Coordinating of referrals to and from other federal and State agencies with farm labor responsibilities, such as OSHA and USES;

(8) Advising regularly the Regional Committee on actual farm labor working conditions in their areas and otherwise participating in regional coordination activities as directed by the Regional Committee; and

(9) Providing specialized training on FLCRA and FLSA as may be requried.

(b) [Reserved]

§ 42.10 Farm labor contact persons and regional coordinators (OSHA).

(a) OSHA Area Directors shall be responsible for ensuring that: (1) Migrant farmworker complaints and referrals are evaluated, and appropriate action is taken; and (2) migrant farmworker camp inspections are scheduled promptly.

(b) OSHA Area Directors shall designate OSHA compliance officers to serve in the capacity of Farm Labor Contact Persons. These Farm Labor Contact Persons shall be trained in enforcement of the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 651 et seq.) and all OSHA standards affecting migrant farmworkers. These Farm Labor Contact Persons shall be designated in OSHA area offices with responsibility for conducting a significant number of migrant farmworker camp inspections.

(c) The OSHA Area Directors shall assign the Farm Labor Contact Person to:

(1) Conduct migrant farmworker camp inspections during periods when migrant housing facilities are occupied, or when it is reasonably predictable the facilities will imminently be occupied;

(2) Serve as a technical advisor on migrant farmworker-related matters;

(3) Train other compliance officers to conduct migrant farmworker camp inspections; and

(4) Perform other OSHA duties, including duties not related to migrant farmworker OSHA enforcement.

(d) Regional Administrators for OSHA shall designate a Farm Labor Regional Coordinator to coordinate migrant farmworker activities. The Farm Labor Regional Coordinators shall:

(1) Coordinate all migrant farmworker related activity within the Region's jurisdiction, i.e., enforcement, training, and public information;

(2) Serve as representatives of the OSHA Regional Administrators on the Regional Farm Labor Coordinated Enforcement Committee's staff level work group; and

(3) Perform other OSHA duties.

(e) OSHA shall request State designees of States having approved occupational safety and health plans and responsibility for conducting a significant number of migrant farmworker camp inspections to appoint a State Farm Labor Coordinator. The State Farm Labor Coordinator shall:

(1) Coordinate State OSHA migrant farmworker camp inspections and other migrant farmworker enforcement activities consistent with the objectives of this section; and

(2) Represent the State on the Regional Farm Labor Coordinating Committee's staff level working group.

§ 42.20 Regional Farm Labor Coordinated Enforcement Committee.

(a) Under the leadership of the ESA Regional Administrator, each region shall establish a Regional Farm Labor Coordinated Enforcement Committee ("Regional Committee"), including representatives of ESA, OSHA, ETA (the Regional MSFW Monitor Advocate), and the Office of the Regional Solicitor.

(b) The Regional Committee shall be headed by the Regional Administrator of ESA.

(c) The Regional Committee shall:

(1) Meet regularly on at least a quarterly basis;

(2) Exchange information on enforcement activities, including complaint/directed action logs developed by the DOL subagencies;

(3) Develop a written coordinated enforcement strategy specifying for the region all information which the Regional Committee believes will be helpful to the National Committee in formulating the annual coordination plan. This strategy shall include at a minimum all information called for by § 42.8 for the region, taking into account particular conditions in the region (e.g., the seasonality of the farm labor population). Once it is reviewed by the National Committee and appropriately revised, the regional offices of ESA, ETA, and OSHA shall follow the enforcement strategy for the year, with revisions as needed by changing circumstances during the year. The National Committee shall be advised of any such revisions;

(4) Maintain contacts with State agencies, farm labor groups, growers, and other interested parties; and

(5) Coordinate cross-training of enforcement personnel within the region.

(d) There shall be a regional committee staff level working group in each region consisting of regional staff representatives from ESA, ETA, OSHA, the Office of the Regional Solicitor, and OSHA State Farm Labor Coordinators within that region. This working group shall meet at least monthly.

(e) The designated Farm Labor Specialist (ESA), Farm Labor Regional Coordinators (OSHA), and MSFW Monitor Advocates (USES) in each region shall be available to provide staff support to the Regional Committees.

(f) To facilitate coordination with farm labor groups and growers in each region, the respective Regional Committee shall hold an annual public meeting, transcribe or recorded at the option of the Regional Committee, which shall be:

(1) Publicized to all appropriate migrant farmworker and grower associations in the region;

(2) Conducted by the director of the Regional Committee with other DOL agency representatives participating as necessary; and

(3) Opened to all members of the public.

(g) The Regional Committee shall conduct and cooperate with the National Committee in order to develop, implement and ensure the uniform and effective application of coordinated enforcement efforts.

§ 42.21 Data collection.

(a) For each protective statute, ESA, OSHA, and the Office of the Solicitor ("SOL") shall regularly collect statistical data reflecting their enforcement efforts on a regional and national basis and shall submit such data quarterly to the National and Regional Committees. Fourth quarter data shall be accompanied by annual summaries. These submissions shall include at least the data items specified in this section. The data collected will provide a basis for coordination of enforcement of the protection statutes.

(b) The statistical data submitted by ESA on FLCRA enforcement shall include: (1) Total compliance actions covered by the Act, showing total farm labor contractor (FLC) actions, total

farm labor contractor employee (FLCE) actions, total User actions, total concurrent FLSA actions, and total actions with noncompliance; (2) total types of assignments (JS complaint, other complaint, employers of undocumented workers); (3) total types of compliance actions (conciliation, full investigation, follow-up investigation, other); (4) total compliance hours expended; (5) total crew workers affected; (6) total violations by categories and type of violation (FLC, FLCE, User); (7) total compliance actions in which civil money penalties (CMPs) are assessed and total amount assessed; (8) total compliance actions in which CMPs are collected and total amount collected.

(c) The Wage-Hour Division shall submit the following statistical data on FLSA enforcement with respect to employees working within the categories of Agriculture, Agricultural Products, and Agricultural Services, etc., and various subcategories of each of these three major categories: (1) Total number of completed investigations; (2) total hours spent in conducting investigations; (3) number of employees found underpaid (total, under minimum wage provisions, under overtime provisions); (4) amount of underpayment found (total, under minimum wage provisions, under overtime provisions); (5) total number of employees to whom income was restored; and (6) total amount of money restored.

(d) OSHA's migrant farmworker enforcement statistical data shall be submitted for each region on a state-by-state basis, including OSHA State Plan States, and shall include: (1) Number of complaints received and number of inspections conducted in response; (2) number of referrals received and number of inspections conducted in response; (3) number of programmed or directed inspections, (4) number of violations found by type of violation (serious, willful, repeat and other than serious); (5) total number of employees affected by inspections; (6) approximate total hours spent on migrant camp inspections; (7) number of inspections for which penalties were proposed and amount proposed; (8) number of inspections for which penalties were collected and amount collected.

(e) The SOL shall submit statistical data on farm labor-related enforcement efforts under each protective statute which shall include: (1) Total cases received by SOL; (2) actions taken on cases (settled, referred to ALJ, civil actions filed, referrals to U.S. Attorney); and (3) results of cases (including injunctions and license revocations and denials).

(f) Complaint Response Data—ESA and OSHA shall submit annually a summary of aging data for their respective migrant farmworker-related activities under FLCRA, FLSA and OSHA respectively, showing aging from receipt of a complaint or completion of an investigation until referral to SOL or other final action by the enforcement agency. The Office of the Solicitor shall submit similar data showing aging of matters between receipt by SOL of a case and the completion of some responsive action on the case. Where available, OSHA shall submit data showing the average length of time between receipt of a complaint and the completion of the action taken in response to the complaint. Where available, ESA shall submit data showing complaints received, complaints on hand, and number of actions completed based on complaints.

(g) The National Committee shall review the data collection systems of ESA, OSHA and SOL, as they pertain to farm labor enforcement, and recommend any necessary changes to the subagencies.